

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Gary Perry

Petitioner,

v.

Criminal Case No. 95-CR-80041

United States of America,

Civil Case Nos. 18-13357

Respondent.

Honorable Sean F. Cox

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**ORDER TRANSFERRING SECOND OR SUCCESSIVE § 2255 PETITION  
TO THE SIXTH CIRCUIT COURT OF APPEALS**

On October 26, 2018, Defendant Gary Perry filed a Motion to Vacate Sentence, pursuant to 28 U.S.C. § 2255. (ECF No. 183).

A defendant seeking to file a second or successive motion under 28 U.S.C. § 2255 must first ask the appropriate court of appeals for an order authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. § 2255(h). When a defendant files a second or successive motion in the district court without authorization from the court of appeals, the district court must transfer the motion to the court of appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

The Court concludes that Perry's October 26, 2018 § 2255 Motion constitutes a "second or successive petition" within the meaning of 28 U.S.C. § 2244(b)(3). Petitioner has not, however, obtained authorization from the Sixth Circuit to file a second or successive petition in this Court. Thus, this Court lacks jurisdiction over this successive § 2255 motion and the matter must be transferred to the Sixth Circuit.

Accordingly, IT IS ORDERED that the Clerk of the Court shall TRANSFER this case to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

Dated: February 6, 2019

s/Sean F. Cox  
Sean F. Cox  
U. S. District Judge

I hereby certify that on February 6, 2019, the foregoing document was served on counsel of record via electronic means and upon Gary Perry via First Class mail at the address below:

**Gary Perry**  
19574039  
Federal Correctional Institution - Milan  
P.O. Box 1000  
Milan, MI 48160-1090

s/J. McCoy  
Case Manager